

Claim Amendments

Claims 1-40 were previously pending in this application. By this amendment, each of claims 1, 2, 21, 24, 25, 32, 37 and 39 is being amended. Dependent claim 41 is being added. No claims are being cancelled. As a result, claims 1-41 are now pending.

Provisional Election of Species

The Election of Species Requirement set forth in the Office Action mailed March 5, 2007 asserts that the application contains claims directed to three patentably distinct species: claims in species I (claims 1-20 and 40); claims in species II (claims 21-38) and a claim in species III (claim 39). In response to the Office Action, Applicant hereby provisionally elects species I for continued examination, with traverse, and respectfully requests that each of claims 1-41 be examined.

Each of independent claims 21, 37 and 39 has been amended, and Applicant believes that each pending claim, as amended, corresponds to species I. Claim 21 has been amended to recite that individual weight coefficients are allocated by giving a larger weight coefficient to an instrument having a larger market capitalization and giving a smaller weight coefficient to an instrument having a smaller market capitalization. Prior to the amendment, claim 21 had recited that individual weight coefficient are allocated by giving a largest weight coefficient to an instrument having a largest market capitalization and giving a smallest weight coefficient to an instrument having a smallest market capitalization. Regarding claim 37, two instances each of “largest weight coefficient” and “smallest weight coefficient” have similarly been amended to read “larger weight coefficient” and “smaller weight coefficient”. These amendments to claims 21 and 37 result in claims which are more similar to claim 1 than prior to the amendments. Claim 39 has been amended to delete the limitation that one third of said selected stocks with a smallest market capitalization is allocated corresponding weight coefficients that assure at least fifteen percent of the entire value of all said stocks for said one third of said stocks. New dependent claim 41 now includes this limitation. This amendment to claim 39 results in a claim which is more similar to claim 1 than prior to the amendment. Additionally, claim 39 has been amended to recite a

representation of a number of at least fifty publicly traded stocks purchased according to corresponding individual unequal weight coefficients. As amended, Applicant believes that each of claims 1-41 corresponds to Species I, and respectfully requests that each of claims 1-41 be examined.

The Restriction Requirement is Unsupported and Unjustified

The Office Action summarily states that the application contains claims directed to three patentably distinct species of invention. The Office Action does not include the basis for the Examiner's conclusion that the application discloses or claims patentably distinct species.

When the Office imposes a requirement for restriction or election, the basis therefore must be articulated on the record and Applicant must be given a chance to argue against that basis. The Office Action does not meet the requirements of MPEP §803 ("Examiners must provide reasons and/or examples to support conclusions..."). It does not present a *prima facie* case for the imposition of the election requirement and, accordingly, is improper and must be withdrawn.

**CONCLUSION**

An action on the merits of all the claims is respectfully requested. If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. Please charge any necessary fees to Deposit Account No. 23/2825.

Respectfully submitted,

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